

7-008A041

ITEL

December 30, 1986

No.

Date JAN 8 1987

Fee \$ 10.00

ICC Washington, D.C.

Itel Rail Corporation

55 Francisco Street
San Francisco, California 94133
(415) 984-4000

RECORDATION NO.

15146

Filed & Recorded

JAN 8 1987 11-25 AM

INTERSTATE COMMERCE COMMISSION

Hon. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423

**Re: Amendment No. 1 to Sublease Agreement, dated December 15, 1986, between
Green Bay and Western Railroad Company and McCloud River Railroad Company**

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to 49 USC §11303(a), along with a check in the amount of \$10 covering the recordation fee.

Please record this Amendment under the new recordation number to be assigned to the Sublease Agreement dated December 15, 1986, between Green Bay and Western Railroad Company and McCloud River Railroad Company.

The parties to the aforementioned instrument are listed below:

Green Bay and Western Railroad Company (Sublessor)
P.O. Box 2507
Green Bay, Wisconsin 54306

McCloud River Railroad Company (Sublessee)
P.O. Drawer A
McCloud, California 96057

This Amendment assigns seventy-five (75) 50'7", 70-ton, Plate C, XP boxcars bearing reporting marks MR 178882-178956 to Canadian National Railways.

Please return to the undersigned the stamped counterparts not required for filing purposes, along with the fee receipt and a letter from the ICC acknowledging this filing.

Very truly yours,

pschumacker

Patricia Schumacker
Legal Department

:ps
Enclosures

cc: Howard L. Chabner, Esq.
Marianne Ledda

RECEIVED
JAN 8 10 57 AM '87
FBI - SAN FRANCISCO

11/24/86

RECORDATION NO. 1 5146 *X*
Filed & Recorded

AMENDMENT NO. 1 JAN 8 1987 11-2 5 AM

INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 1 (the "Amendment") to that certain Sublease Agreement, made as of December 15, 1986, (the "Sublease") between GREEN BAY & WESTERN RAILROAD COMPANY ("Sublessor") and McCLOUD RIVER RAILROAD COMPANY ("Sublessee") is made as of this 16th day of December, 1986 between Sublessor and Sublessee.

R E C I T A L S:

- A. Sublessor and Sublessee are parties to the Sublease pursuant to which seventy-five (75) boxcars (the "Cars") described therein have been leased to Sublessee.
- B. Sublessor and Sublessee desire that Sublessee assign the Cars to Canadian National Railways ("CN") for a period of time.

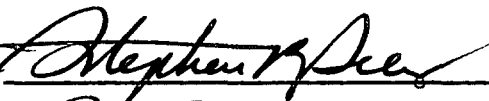
NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties hereto agree to amend the Sublease as follows:


- 1. All terms defined in the Sublease shall have the meanings defined therein when used in the Amendment.
- 2. Sublessor consents to Sublessee's entering into an assignment agreement with CN for seventy-five (75) Cars ("CN Assignment Agreement"), provided that the CN Assignment Agreement is in the form of Exhibit A attached hereto. Sublessor's consent is specifically conditioned upon the following: (a) Sublessee's agreement that Sublessee shall remain primarily responsible for the payment of rent set forth in the Sublease and for the performance of all the other terms of the Sublease to be performed by Sublessee, (b) Sublessee's agreement that the CN Assignment Agreement is subject and subordinate to the rights of Sublessor under the Sublease and any modification or amendment thereof, and (c) Sublessee shall, if directed by Lessor, and if and to the extent legally permissible, assign its interest in the CN Assignment Agreement to any party designated by Sublessor.
- 3. Sublessee shall exercise its rights as Assignor to terminate or extend the CN Assignment Agreement with respect to any Car(s) or to substitute any Car(s) only with Sublessor's prior written consent and shall exercise such rights promptly upon receiving notice from Sublessor to do so.

4. The parties hereto acknowledge that notwithstanding Section 4 of the Sublease, during the term of the CN Assignment Agreement only, CN shall perform, at its expense, the registration and record-keeping functions with respect to the Cars set forth in Paragraph 4 of the CN Assignment Agreement and Sublessor shall have no liability with respect to the Cars in connection with Section 4 of the Sublease.
5. The parties hereto acknowledge that notwithstanding Section 5 of the Sublease, CN shall pay those taxes set forth in Paragraph 5 of the CN Assignment Agreement and Sublessor shall not be held liable for such taxes.
6. The parties agree that during the term of the CN Assignment Agreement only, all full payments of Revenues (as defined in the CN Assignment Agreement) made by CN with respect to the Cars shall be paid to Sublessor and that such full payment of Revenues shall satisfy Sublessee's rental obligations with respect to such Cars.
7. During the term of the CN Assignment Agreement, Subsections 3.B, 7.E, 7.F, and 7.G shall be of no force or effect with respect to the Cars. Upon the expiration or termination of the CN Assignment Agreement, the foregoing subsections shall be reinstated into the Sublease with respect to the Cars.
8. Except as expressly modified by the Amendment, all terms and provisions of the Sublease shall remain in full force and effect with respect to all of the Cars subject to the Sublease.
9. This Amendment may be executed by the parties hereto in any number of counterparts, and all said counterparts taken together shall be deemed to constitute one and the same instrument.

GREEN BAY & WESTERN
RAILROAD COMPANY

McCLOUD RIVER
RAILROAD COMPANY

By: 
Title: President
Date: 12-15-86

By: 
Title: Pres.
Date: 12/8/86

STATE OF Wisconsin)
COUNTY OF Brown) ss:

On this 15th day of December, 1986, before me personally appeared Stephen P. Selby, to me personally known, who being by me duly sworn says that such person is President of GREEN BAY & WESTERN RAILROAD COMPANY, that the foregoing Amendment No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

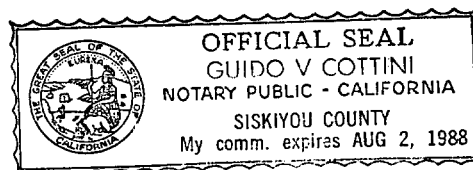
Francis L. Renard
Notary Public

FRANCIS L. RENARD
NOTARY PUBLIC, STATE OF WISCONSIN
My Commission Expires Sept. 27, 1987.

STATE OF California)
COUNTY OF Siskiyou) ss:

On this 8th day of December, 1986, before me personally appeared Paul A. Zalec, to me personally known, who being by me duly sworn says that such person is President of McCLOUD RIVER RAILROAD COMPANY, that the foregoing Amendment No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Guido V. Cottini
Notary Public



**McCLOUD RIVER RAILROAD COMPANY**

P.O. BOX 1500

McCLOUD, CALIFORNIA 96057-1500

November 4, 1986

Mr. R. F. Ruggiero
Assistant Chief of Transportation-
Car Management
Canadian National Railways
935 de la Gauchetiere St. West
Montreal, Quebec H3B 2M9

Dear Mr. Ruggiero:

Please accept this letter as the agreement ("Assignment Agreement") whereby McCloud River Railroad Company ("Assignor") shall supply Canadian National Railways ("Assignee") with one hundred seventy-five (175) boxcars bearing the reporting marks MR 4500-4599 and MR 178982-178956 as described in Equipment Schedules No. 1 and No. 2 attached hereto (the "Boxcars"). Assignee shall, only upon Assignor's instructions, place said Boxcars into an assignment pool on Assignee's railroad lines as provided for in Car Service Rule 16 and under the provisions of Car Service Directive 145 of the Code of Car Service Rules, AAR Circular No. OT.-10.

The term of this Assignment Agreement, with respect to each Boxcar, shall commence on the date and at the location such Boxcar is delivered to and accepted by the Assignee ("Delivery") and shall expire as to all the Boxcars five (5) years from the earlier of (i) the Delivery of the last Boxcar, or (ii) ninety (90) days after the Delivery of the first Boxcar.

Assignor agrees that at the expiration of this Assignment Agreement, Assignee will be given the first opportunity to extend or renew the Assignment Agreement at terms and conditions to be agreed by the parties.

Assignee shall (i) comply with the handling carrier's obligations under AAR Interchange Rules while the Boxcars are in Assignee's possession and (ii) at Assignee's expense, prepare and file all reports and documents related to or necessary for the use of the Boxcars in Canada.

Assignee assumes responsibility for and agrees to pay, protect, defend, hold harmless and indemnify Assignor against taxes, levies, import duties or withholdings of any nature together with penalties, fines or interests thereon imposed on, or incurred by or asserted against the Boxcars or the revenues earned by the Boxcars during the term of this Assignment Agreement, including all taxes and withholdings imposed by any local, provincial, state, federal or national government, except taxes on paid-up capital or corporate income earned by Assignor.

If during the term of this Assignment Agreement there are any changes to

existing tax laws or the imposition of any new taxes that would significantly increase costs to the Assignee, Assignor and Assignee agree to negotiate a new assignment agreement and in the event a new assignment agreement cannot be mutually agreed upon, Assignee shall have the right to terminate the Assignment Agreement upon 120 days written notice to Assignor.

If any Boxcar returns to Assignor's line as a result of Assignee not filing the assignment pool code properly, Assignee shall be responsible for all costs associated with returning such Boxcar to Assignee. Assignor shall use its best efforts to prevent any Boxcar from being interchanged onto its lines during the term of this Assignment Agreement, including advising Assignor's connecting carrier that the Boxcars have been placed into an assignment pool on Assignee's lines and that the connecting carrier should not return such Boxcars to Assignor during the term of this Assignment Agreement.

During the term of this Assignment Agreement, Assignor may, at its expense, replace any or all of the Boxcars with boxcars of similar design, age and quality upon not less than sixty (60) days' prior written notice to Assignee; provided, however, that any such replacement shall not prevent or prohibit Assignee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.

Any of the following events shall constitute an event of default by Assignor:

- 1) The filing by Assignor of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law or any other law for the relief of debtors, or the filing of any such petition or action against Assignor not dismissed within sixty (60) days;
- 2) Levy upon or seizure of any Boxcar by Creditors of Assignor, resulting from acts of Assignor.

Upon the occurrence of any event of default as described in the above Paragraphs, Assignee may, at its option, upon forty-five (45) days written notice to Assignor, terminate this Assignment Agreement.

After acceptance by the Assignee on Assignee's line, each Boxcar will be car hire free (time and mileage) until the earlier of (a) the date such Boxcar is first loaded with freight on Assignee's lines, or (b) the thirty-first (31st) day after such Boxcar is first interchanged to Assignee's line (such earlier date to be known as the "Initial Load Date"). After the Initial Load Date,

Assignee shall not take any action that would result in any abatement, reduction or offset that diminishes the Revenues earned by any Boxcar during any calendar month under the term of this Assignment Agreement. In the event of such abatement, reduction or offset resulting from any action of Assignee, Assignee shall, within thirty (30) days of notification thereof from Assignor, pay to Assignor an amount equal to such abatement, reduction or offset.

Assignor is financially responsible for normal maintenance and repair expenses. Assignee is responsible for damage to the Boxcars while on its lines under applicable AAR Rules. For any Boxcar damaged that requires repairs other than running repairs during this assignment agreement, car hire (time and mileage) will be governed by applicable Car Hire and Car Service Rules.

The parties agree that the Revenues to be received by Assignor for use of the Boxcars under this Assignment Agreement (subject to Car Hire Relief and other provisions of this Agreement) shall be determined by the hourly and mileage car hire rates prescribed for excluded boxcars under the Commission's decision in ICC Ex Parte No. 346 (Sub-No. 19) served September 12, 1986, set forth in the Appendix to such decision in paragraph (c) (3) of 49 C.F.R. 1039.14; provided, however, that in the event the ICC shall change the compensation system for excluded boxcars, the Revenues to be received by Assignor shall thereafter be determined by the rates for excluded boxcars under such new system.

In the event that Assignor shall receive Revenues for the use of such Boxcars during the term of this Assignment Agreement that are lower in amount than those specified for excluded boxcars as provided in the preceding paragraph, the parties hereto shall negotiate a new assignment agreement which is mutually satisfactory to Assignor and Assignee. If the parties are unable to negotiate a new assignment agreement within forty-five (45) days, this Assignment Agreement shall remain in effect, but Assignor may terminate the Assignment Agreement upon not less than sixty (60) days' prior written notice to Assignee.

Upon expiration or termination of this Assignment Agreement, Assignee shall ensure that the Boxcars are in interchange condition, normal wear and tear excepted and remove the Boxcars from the provisions of Car Service Rule 16 and Car Service Directive 145 of the Code of Car Service Rules, AAR Circular No. OT.-10.

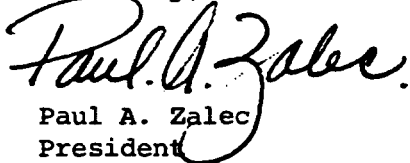
Thereafter, Assignee shall use its best efforts to provide final outbound loads for each Boxcar. At Assignor's option, Assignee shall grant up to one hundred twenty (120) days free storage for each such Boxcar or shall deliver, at Assignee's expense, each such Boxcar to any interchange point on Assignee's lines designated by Assignor. Assignor shall designate in writing an interchange point on Assignee's lines not less than twenty (20) days prior to the expiration of the storage period described herein. Within fifteen (15) days of such notice, Assignee shall begin movement of the Boxcars to the designated interchange point and Assignor shall grant Assignee per diem and mileage reclaim for each Boxcar until the hour such Boxcar is interchanged off Assignee's railroad lines. If, after such fifteen (15) day period, any Boxcar has not begun movement to the interchange point, all applicable per diem and mileage charges shall apply to such Boxcar in accordance with the Car Hire Rules of the AAR. Assignee shall not be held responsible for any customs duties or any other lawful penalties after expiration of the Assignment Agreement.

Assignee recognizes that the right of Assignor and Assignee are subject and subordinate to the rights of any lessor, owner or secured party with respect to the Boxcars.

This Assignment Agreement shall be governed by and construed according to the laws of the State of California.

Please indicate your concurrence to the above terms and conditions by signing both (2) enclosed originals and returning one to me.


Sincerely,


Paul A. Zalec
President

Concurrence By:

CANADIAN NATIONAL RAILWAYS

By: 

Title: 

Date: Nov 17 - 1986

EQUIPMENT SCHEDULE NO. 1

McCloud River Railroad Company hereby assigns the following-- Boxcars to Canadian National Railways subject to the terms and conditions of that certain Assignment Agreement dated as of 11-4, 1986.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions Inside		Doors Width	No. of Cars
				Width	Height		
XP	70-ton Plate B Boxcars Nailable Steel floor, cushioning, lading anchors, continuous	MR 4500- 4599	50'6"	9'6"	10'7"	2-8' Sliding	100

~~MC CLOUD~~ RIVER RAILROAD COMPANY

By: Paul A. Zalec

Title: PRESIDENT.

Date: 11-4-86

CANADIAN NATIONAL RAILWAYS

By: R. S. Higgins

Title: Asst. Chief of Transport CN

Date: Nov 17-86

EQUIPMENT SCHEDULE NO. 2

McCloud River Railroad Company hereby assigns the following Boxcars to Canadian National Railways subject to the terms and conditions of that certain Assignment Agreement dated as of 11-4, 1986.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions		Doors Width	No. of Cars
				Inside Width	Height		
XP	70-ton Plate C Boxcars lading anchors, continuous	MR 178882- 178956	50'7"	9'6"	11'	10' Plug	75

MC CLOUD RIVER RAILROAD COMPANY

By: Paul A. Zale

Title: PRESIDENT

Date: 11-4-86

CANADIAN NATIONAL RAILWAYS

By: R. Huggen

Title: Asst. Chief of Mgmt. Cn

Date: Nov. 7- 1987



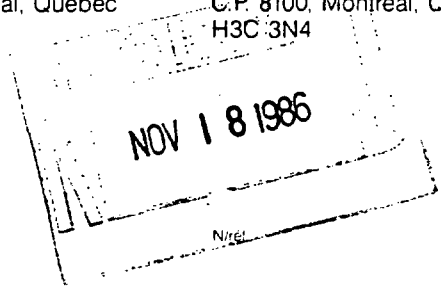
Operations
Canadian National
Box 8100, Montreal, Quebec
H3C 3N4

Exploitation
Canadien National
C.P. 8100, Montréal, Québec
H3C 3N4

TRANSPORTATION - Car Management

Montreal, 1986 November 14

Reference



Mr. Donald D. Chute
Director - Operations
Itel Rail Corporation
55 Francisco Street
San Francisco, CA 94133

Dear Mr. Chute:

Please refer to the Assignment Agreement dated November 4, 1986, between Canadian National Railways and the McCloud River Railroad with respect to the 175 boxcars marked MR 178882-178956 and MR 4500-4599. The following procedures will be used in deducting Relief up to the Maximum Monthly Relief from the monthly car hire reports: the Canadian National will allow all hours and miles earned each month but shall deduct Relief up to the Maximum Monthly Relief by making a one-line money adjustment from the monthly car hire report ("Report") with Relief detail contained on deduction sheets attached to the Report. The hours and miles being deducted shall not be reported via the AAR Car Hire Data Exchange Tape.

Sincerely,

R.F. Ruggiero
Asst. Chief of Transportation
- Car Management

WJK/ww